

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Dawn E. Kelley, :
Plaintiff, :
v. : Case No. 2:10-cv-143
Judge Joseph J. Bruzzese,
Jr., et al., : JUDGE FROST
:
Defendants.

ORDER ADOPTING
REPORT AND RECOMMENDATION

On February 18, 2010, plaintiff, Dawn E. Kelley, submitted a request for leave to proceed *in forma pauperis* and a proposed civil complaint. In a Report and Recommendation dated March 4, 2010, the Magistrate Judge recommended that this case be dismissed. Ms. Kelley filed objections to the Report and Recommendation on April 5, 2010. For the following reasons, the objections will be overruled and the case will be dismissed.

As the Report and Recommendation reflects, in this case, Ms. Kelley raises a number of issues relating to her trial in the Jefferson County Court of Common Pleas on criminal charges contained in a March 7, 2007 indictment. As it also notes, in Case No. 2:09-cv-237, Kelley v. Bruzzese, et al., Ms. Kelley sued the same defendants, except for defendant Gene Gallo, and raised the same issues. On July 21, 2009, this Court dismissed that case. The Report and Recommendation concluded that the legal doctrine of *res judicata*, and particularly the aspect of that doctrine known as "claim preclusion," requires the Court to dismiss those claims here.

The Report and Recommendation relied on decisions including

Federated Dept. Stores v. Moitie, 452 U.S. 394, 398 (1981) and Commodities Export Co. v. U.S. Customs Service, 957 F.2d 223, 228 (6th Cir. 1992) for its determination that Ms. Kelley is precluded from raising these same claims again, or any other claims against the same defendants arising out of her trial and conviction, because of the judgment in the prior case. Ms. Kelley's objections cite no cases on the claim preclusion issue. Rather, she argues the merits of her claims and asserts that the Court should be reluctant to dismiss civil rights claims without a hearing. That argument simply misses the point that Ms. Kelley had one chance (i.e., her prior case) to present these claims, and the result of that case was the entry of judgment against her. She does not get a second chance.

The Report and Recommendation identifies independent reasons why Ms. Kelley's complaint does not state a viable federal claim against Mr. Gallo. Her objections do not address that claim at all. She has therefore waived any objection to the Report and Recommendation as it relates to Mr. Gallo. Even if she had not, the Court finds, for the reasons set forth in the Report and Recommendation, that her complaint fails to state a claim against him.

Having reviewed the issues in this case *de novo*, the Court overrules the objections (#9) to the Magistrate Judge's Report and Recommendation and ADOPTS that Report and Recommendation. This case is DISMISSED under 28 U.S.C. §1915(e)(2). The Clerk is directed to enter judgment in favor of defendants and to mail them a copy of the complaint and this dismissal order.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE